

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGE GAMES, LLC a California Limited
Liability Company, } Case No. EDCV13-02123 VAP
Plaintiff, } (DTBx)
vs. }
HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY, a Massachusetts
Corporation; and DOES 1-
10, } [PROPOSED] ORDER
Defendants. } GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT OR,
ALTERNATIVELY, FOR
SUMMARY ADJUDICATION OF
ISSUES
HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY, a Massachusetts
Corporation, } Date: May 4, 2015
Counter-Claimant, } Time: 2:00 p.m.
vs. } Court: 2
EDGE GAMES, LLC a California Limited
Liability Company, }
Counter-Defendant. }

1 The Motion for Summary Judgment or, Alternatively, for Partial Summary
 2 Adjudication of Issues filed by Defendant and Counter-Claimant Houghton Mifflin
 3 Harcourt Publishing Company (“HMH”), came on for hearing on May 4, 2015, in
 4 Courtroom 2 before the Honorable Virginia A. Phillips. Having reviewed and
 5 considered the motion and all other papers submitted and having heard the arguments
 6 of the parties, if any, the Court hereby GRANTS in its entirety HMH’s Motion.

7 In particular, the Court holds the following:

8 1. HMH is entitled to summary judgment for trademark infringement
 9 under the Lanham Act, false designation of origin under the Lanham Act, and unfair
 10 competition because Edge Games cannot prove that HMH’s use of the *ScienceFusion*
 11 title creates a likelihood of confusion. *See Brookfield Commc’ns, Inc. v. W. Coast*
 12 *Entm’t Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999); *Acad. of Motion Picture Arts &*
 13 *Scs. v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1457 (9th Cir. 1991).

14 2. HMH is also entitled to summary judgment for trademark infringement
 15 under the Lanham Act, false designation of origin under the Lanham Act, and unfair
 16 competition because (a) there is no evidence of any actual damages suffered by Edge
 17 Games (*Lindy Pen Co. v. Bic Pen Corp.*, 982 F.2d 1400, 1407 (9th Cir. 1993)); (b)
 18 disgorgement of HMH’s profits is unavailable because it is undisputed that HMH has
 19 not made any profits from the sales of its textbooks, Edge Games is not a direct
 20 competitor of HMH entitled to profits, and there is no evidence that HMH acted
 21 willfully (*id.; Maier Brewing Co. v. Fleischmann Distilling Corp.*, 390 F.2d 117, 121
 22 (9th Cir. 1968); *Adray v. Adry-Mart, Inc.*, 76 F.3d 984, 988 (9th Cir. 1995)); and (c)
 23 disgorgement of profits is not an available remedy under Business and Professions
 24 Code § 17200 (*Korea Supply Co v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1152
 25 (2003); *BizCloud, Inc. v. Computer Scis. Corp.*, No. C-14-00162 JCS, 2014 WL
 26 1724762 at *4 (N.D. Cal. Apr. 29, 2014)).

27 3. HMH is entitled to summary judgment for false advertising under the
 28 Lanham Act because there is no evidence that HMH has made a false statement of

1 fact as to the nature, characteristics, qualities, or geographic origin of its
2 *ScienceFusion* textbook or of Edge's game. *Southland Sod Farms v. Stover Seed*
3 *Co.*, 108 F.3d 1134, 1139 (9th Cir. 1997). Nor is there evidence that any false
4 statement by HMH actually deceived, has the tendency to deceive a substantial
5 segment of its audience or that Edge Games has been, or that Edge Games is likely to
6 be injured as a proximate result of any false statement of fact by HMH. *Harper*
7 *House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 210 (9th Cir. 1989).

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9 IT IS SO ORDERED.

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DATED: _____

12 Honorable Virginia A. Phillips
13 U.S. DISTRICT COURT JUDGE

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